

BORDER SOLUTIONS



AMERICAN IMMIGRATION LAWYERS ASSOCIATION

Policy Brief: Border Solutions Are Attainable, but Proposals under Consideration Fall Far Short

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America urgently needs solutions to manage unprecedented migration levels arriving at the U.S. southern border. With volumes exceeding capacity at the border and political pressure mounting, there is greater imperative for the country to exercise control over its borders and process migrants more rapidly, efficiently and fairly. It starts with Congress funding DHS and other agencies to adjudicate cases more effectively, protect those eligible for asylum, ensure compliance with immigration law, and support local American communities hosting migrants. Effective border management cannot be done by focusing only on the border region: it also requires addressing delays and backlogs at USCIS, State Department consulates, and immigration courts that cause bottlenecks at the border. In addition, expanding orderly legal pathways will alleviate the pressure at the border.

The border deal under consideration by Congress and the White House would usher in radical restrictions on immigration while still not meeting the challenges at the border. Though cast as border security measures, this deal would make the border region more chaotic and dangerous. Large numbers of people, still arriving, will be stuck along the U.S./Mexico border in squalid conditions and preyed upon by cartels and smugglers. The crime, violence, and instability in Mexico will spill over into American communities, severely impacting quality of life and security. Some of the proposals now being discussed were attempted by President Trump and resulted in lasting, harmful consequences on both sides of the border. President Biden dismantled them and should not accept a deal that resurrects them.

Congress must act immediately, but it should not pass extreme immigration measures on an emergency spending bill without time for the public to comment or even for lawmakers to digest it. Congress must pass immigration reforms but through regular order not a backroom deal.

America needs solutions to ensure border security and the efficient and fair processing of migrants.

1. **Increase border agency capacity** to screen migrants more efficiently and to decide their cases fairly and with finality so that those eligible for asylum and other legal protection know they can stay and that those not eligible depart the country. The \$13.6 billion border supplemental makes an enormous investment toward achieving these goals. It funds major increases in CBP staff and infrastructure at ports of entry to process migrants through legal proceedings, more officers to screen asylum seekers, and funding for immigration courts. To make the process more efficient, there also needs to be better coordination between CBP, ICE, USCIS, and the courts. Case matters should not be held up, as is the case now, while immigration courts wait weeks for CBP's legal documents to get uploaded because their databases don't talk to each other.
2. **Provide legal representation for people arriving at the border** to facilitate faster case processing and ensure fair decisions. Migrants typically have little to no understanding of the immigration legal system. This puts more responsibility on border officials and immigration judges to explain the process, their rights and obligations under the law. These extra steps are inefficient and time-consuming; they are more effectively handled by the appointment of legal counsel. Legal representation is also absolutely critical to achieving fair and accurate legal decisions. Asylum seekers represented by counsel are [5 to 10 times more likely](#) to be found eligible for protection. Without lawyers, more people who are eligible for asylum will be denied relief and wrongly sent back into harm's way.
3. **Increase CBP and law enforcement** operations that target Fentanyl, other drug and weapons trafficking at their source and as they cross the border. Stopping the flow of illegal narcotics and firearms will stave off the opioid epidemic and gun violence impacting communities nationwide. The heightened investments in [federal law enforcement](#) resulted in major seizures of opioids and [increased disruption](#) of illicit drug trade.
4. **Expand legal pathways to reduce unauthorized entries.** Humanitarian parole, and other tools, such as Safe Mobility Offices, offer orderly screening for migrants and divert migrants away from the border. Following precedent set by past Republican and Democratic presidents, the Biden administration's expanded use of humanitarian parole created more legal pathways for people to come to US through orderly means. More legal pathways will alleviate pressure that otherwise drives people to the border.
5. **Provide cities with the resources they need to support new arrivals** by funding the administration's request for the Shelter and Services Program (SSP). In fiscal year 2023, the federal government provided [\\$800 million](#) through SSP and its predecessor program to localities nationwide to assist migrants arriving in their communities with temporary

shelter, food, and acute medical care. The federal support is enabling communities across the country to step up and welcome newcomers.

6. **Increase funding for USCIS and State Department** to speed up processing of applications for visas and other legal petitions, reduce delays at the border and alleviate [pressure that drives](#) people to the border. Insufficient funding for these agencies and inefficiencies in their procedures has resulted in excessive delays for people eligible for employment and family visas. Those backlogs inadvertently push eligible people to attempt to cross at the U.S. southern border.

The extreme measures being proposed will make the border more dangerous and chaotic for people on both sides.

1. **Closing the border:** A mandatory shut down of the border when numbers reach a certain level will still result in migrants coming to the border and waiting in Mexico. Their waiting in unsafe conditions will be a boon to cartel expansion, exacerbate crime and fuel more [narcotics smuggling](#) on both sides of the border. Mexican [cartel activity in the United States](#) has already risen in recent years and is directly linked to drug and weapons trafficking. The Trump administration's Title 42 ban and "Remain in Mexico" did not stop people from coming but created a humanitarian disaster. More capacity is needed to process higher numbers of migrants arriving at the border. But a mandatory border closure is no solution, only chaos that will hurt communities north and south of the border.
2. **Breathtaking expansion of enforcement power** into the interior to rapidly deport people who are undocumented without a court hearing or any due process. The power to apply [expedited removal](#) (ER) nationwide would disrupt and risk the lives of undocumented people, most of whom have lived in the United States [for 10 years](#) and have children and families. Assurances that the policy would only apply to people here for less than two years are not convincing in light of the aggressive and indiscriminate practices that the previous administration used. Additionally, many [U.S. citizens are improperly removed](#) in ER because of the speed and lack of fairness with which it occurs. Furthermore, family separation will be a reality again when some members are removed while dependents with legal status remain. President Biden rescinded the Trump administration's attempt to implement ER in the interior because of its devastating impact on families and people with ties to their communities.
3. **Mandatory detention costs taxpayers billions** and cannot be fully operationalized for years. It only adds to private prisons' profits and subjects vulnerable families and asylum seekers to inhumane jails, rather than reuniting them with family and friends who support them. An even more expansive immigrant prison system is unacceptable and ineffective in deterring unauthorized migration.
4. **Closing legal pathways by eliminating humanitarian parole authority will increase illegal entries:** Stripping the President's ability to create legal pathways to protect Ukrainians, Afghans, and other people experiencing acute crises drives more people to

enter through our southern border. The Cuban, Haitian, Nicaraguan, Venezuelan parole program has already proven successful in providing alternative and more orderly legal pathways. These legal pathways are estimated to have reduced by [380,000 people](#). Eliminating parole is entirely counter-productive to the goal of improving border security.

5. **A transit ban** on people who traveled through another country (mainly Mexico) will not deter people from coming to the U.S./Mexico border. Instead, it will lead to more entries between ports of entry and increase tent cities along the border which are prime targets for cartel violence, human suffering, and instability for both the United States and Mexico.
6. **Raising the legal standard for initial asylum screenings** ([credible fear interviews](#)) will lead to eligible asylum seekers being wrongly sent back to persecution and violent, dangerous conditions. Credible fear interviews are meant only as a preliminary step and do not offer due process protections. Almost no one has attorney representation at this stage. This proposal will not deter people from coming to the border.

AILA resources:

1. [Policy Brief: What Would be the Impact of Expanding Expedited Removal Nationwide](#)
2. [Policy Brief explaining why raising the Asylum Credible Fear Standard](#)
3. [Policy Brief: Barriers to Immigrant Visas are Driving Migrants to the Southern Border](#)